

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
IP-Enabled Services)	WC Docket No. 04-36
)	

COMMENTS OF THE RURAL INDEPENDENT COMPETITIVE ALLIANCE

The Rural Independent Competitive Alliance ("RICA"), by its attorney, files these comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in this proceeding, FCC 04-28, released March 10, 2004.¹ RICA is a national association of more than 80 competitive local exchange carriers ("CLECs") that are affiliated with rural incumbent local exchange carriers ("ILECs") and provide facilities-based service in rural areas.

SUMMARY

The Commission should ensure that rules adopted to contemplate the widespread adoption of IP enabled traffic throughout the nation's telecommunications networks ensure that rural CLECs are able to offer to subscribers the panoply of communications services based on the Internet Protocol. In doing so, it must avoid artificial regulatory distinctions that fail to account for the functional identical nature of some services, create arbitrage opportunities, or which could have the effect of limiting rural CLEC recovery of an appropriate portion of their costs through access charges and USF support. Any rules created must be sufficiently timely and clear to avoid unnecessary, costly litigation.

¹ 69 Fed. Reg. 16193 (2004).
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I INTRODUCTION: INTEREST OF RURAL CLECS

A. Characteristics of Rural CLECS

Following passage of the 1996 Telecommunications Act, many Rural Telephone Companies responded to the long expressed demands for their services from neighboring rural communities served by large ILECs. These demands were the result of long neglect of the rural areas by large companies which resulted in ill-maintained, obsolete facilities, lack of advanced services and no local points of contact. The rural telephone companies created CLEC operations, either as divisions or affiliated entities, to serve these neighboring communities. Typically, the rural CLECs quickly attracted a majority market share in the communities they entered because of their superior, advanced services and local ownership and control.

In recent comments in the closely related proceeding investigating deployment of advanced telecommunications capability, GN Docket No. 04-54, RICA provided extensive details from a recent member survey which documents the high level of sophistication of the service offerings of typical RICA members.² Of direct relevance to this proceeding, RICA reported that 95% of reporting members provide DSL, 20% offer cable modem service, 20%, offer WIFI hot spots, and 18 % already offer Voice over Internet Protocol (“VOIP”) services.³

² *Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment*, GN Doc. No. 04-54, Comments of RICA, May 10??, 2004. RICA requests that these comments be incorporated by reference in this docket.

³ *Id* at 3.
RICA Comments, WC Docket No. 04-36
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B. Objective of RICA

RICA proposes three principle objectives with respect to the ultimate resolution of this proceeding.

First, the Commission should ensure that regulation of IP enabled services develops in a manner that facilitates the ability of RICA members and other rural service providers to make available to their subscribers the full panoply of new services made possible by Internet applications. This means that not only should the Commission refrain from imposing restrictions on which entities can provide which service on the basis of the previous regulatory status of the entity or its parents, but it must also seek to understand what positive conditions will encourage and facilitate participation by rural entities such as RICA members in offering such services.

Second, the Commission must refrain from artificial regulatory distinctions that have the effect of limiting the ability of rural CLECs to recover an appropriate portion of their costs through access charges and Universal Service Support.

Third, the Commission should develop a regulatory approach to the rapid market and technology changes in which its policies and rules are sufficiently timely and clear that the industry need not expend major resources on endless litigation to resolve situations not addressed or muddled by inadequate or ambiguous rules.

II A CLEAR STATEMENT OF THE OBLIGATIONS OF ALL SERVICE PROVIDERS TO PAY FOR ACCESS USED, CONTRIBUTE TO UNIVERSAL SERVICE, AND COMPLY WITH SOCIAL OBLIGATIONS IS NOT "REGULATING THE INTERNET"

A. RICA agrees that all traffic sent to the PSTN should have similar obligations.

RICA agrees with the Commission's statement in the NPRM that "any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective

of whether the traffic originates on the PSTN, on an IP network, or on a cable network".⁴ This statement is consistent with the Commission's recent declaratory ruling regarding AT&T which found that use of IP technology in the middle of a communications does not convert an ordinary telephone call into an information service.⁵ It is also consistent with the fact that when an IP enabled call is converted to TDM and terminated on the PSTN, the use it makes of the local facilities is entirely indistinguishable from that of a traditional POTS call.

Because the Commission found that AT&T's service provided nothing unique at all from the subscriber perspective, it can be expected that there will be a flurry of activity testing how minor and inconsequential additional services may somehow allow service providers to avoid paying access for what remains essentially an interstate telecommunications service.⁶ The Commission must establish rules that recognize the essential nature of the service, and which do not encourage attempts to create artificial distinctions for the purpose of regulatory arbitrage.

The reason it is important for rural carriers to continue to be able to rely on these sources of cost recovery is simply that they are necessary to: (a) ensure that facilities remain in place to receive the flow of TDM traffic which is likely to continue for the indefinite future, however fast VOIP grows; and (b) to enable rural service providers sufficient revenues to enable construction and operation of the broadband facilities without which IP enabled telecommunication services such as Vonage's cannot expand.

⁴ NPRM at para. 33.

⁵ *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, Order, WC Docket No. 02-361, FCC 04-97, rel. Apr. 21, 2004

⁶ For example, if a carrier provides the time of day at the location calling or being called, this minor bit of information does not change the essential nature of the service. RICA Comments, WC Docket No. 04-36
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B. All providers of telecommunications Service Should Contribute to Universal Service Support

While the issue of whether IP enabled services can are exempt from various obligations remains unresolved, the Commission can expect that a growing number of service providers will attempt to gain market share by advertising that their service is not subject to the various contribution requirements, such as to the federal Universal Service Fund ("USF"), resulting in a net lower price to consumers. If IP enabled services claiming to be exempt from contribution grow as rapidly as many predict, the USF will eventually become unable to provide sufficient support for the facilities that are a necessary component of the service.

The President and others have described a national goal of ubiquitous broadband access in this decade. Absent some as yet unforeseen technology breakthrough, ubiquity cannot be achieved without adequate USF support.. How and under what conditions non-LEC providers of broadband access could achieve Eligible Telecommunications Carrier status and have appropriate support levels are also issues that the Commission must ultimately address. An appropriate Section 254 Joint Board proceeding is apparently required to resolve those issues, however. It may be that legislative action is necessary because of the "chicken and egg" issue in Section 254 (c) (1)(B), which requires that supported services be subscribed to "by a substantial majority of residential customers."⁷

C. Uniform Applicability of Other Social Obligations Is Important in its own right, as well as to maintain competitive neutrality.

In addition to USF contribution, the LEC industry is responsible for a myriad of obligations, including equal access, number portability, access to emergency calling, and CALEA.

⁷ 47 U.S.C. 254(c)(1)(B).
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Most, if not all of these obligations were imposed at a time when it was not apparent that services functionally identical to LEC service would be provided to a significant part of the population by entities claiming to be exempt on the basis that they are "information service" providers. While the answer to extension of some of these obligations may be their elimination, others continue to have valid, even vital, social purposes which the Commission should not allow to be defeated. At the same time, the imposition of obligations on some entities but not on their direct competitors creates an intolerable tilt to the competitive playing field. Functional equivalency must be evaluated in a realistic rather than hyper-technical sense.

III CONCLUSION

IP Enabled telecommunications offers tremendous prospects for improved communications for business and residential users throughout the nation, but especially in rural areas where distances make effective communications particularly critical. RICA member rural CLECs are prepared to evolve their business to ensure that the benefits are available to rural subscribers. For rural CLECs to be successful, however, the transition in regulation and technology must evolve in a constructive rather than destructive manner. The Commission must ensure that the rules that enable appropriate cost recovery for rural carriers are not negated by

regulatory gamesmanship which allows some entities to avoid obligations imposed upon their competitors by artificial distinctions.

Respectfully submitted,

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